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In re Application of : DECISION ON  
Emmert-Buck et al :  
Application No. : 10/511,511 :  
PCT No.: PCT/US03/12734 : PETITION UNDER  
Int. Filing Date: 25 April 2003 :  
Priority Date: 26 April 2002 :  
Attorney's Docket No.: 4239-64816-02 :  
For: DIRECT CELL TARGET ANALYSIS : 37 CFR 1.10 (c)

This decision is in response to the "PETITION TO CORRECT DATE ON FILING RECEIPT AND NOTICE OF ACCEPTANCE OF APPLICATION," filed on 13 May 2005, which is being treated as a petition under 37 CFR 1.10 (c) requesting that the 371(c)(1), (c)(2), and (c)(4) date of 14 October 2004 be changed to 15 October 2004 for the above identified application. No fee is required for this petition.

### **BACKGROUND**

This petition is to correct the 371(c)(1), (c)(2), and (c)(4) date of the above application that was purported to have met the national stage requirements on 15 October 2004 since this is the date it was deposited with the USPS.

On 13 May 2005, petitioner filed the present petition. The petition includes, *inter alia*, a copy of the Track & Confirm shipment printout showing that "Express Mail" label EV35 2377 144US was deposited in a USPS Office on October 15, 2004.

### **DISCUSSION**

37 CFR 1.10(c) provides:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

A review of the application papers reveals that "Express Mail" Label No. EV352377144US was placed, *inter alia*, on the PTO transmittal letter (PTO-1382). Although no copy of the customer receipt of "Express Mail" Label No. EV352377144US was filed with the present petition, petitioner has submitted a copy of the USPS "Track & Confirm" sheet, which shows that the international application with the "Express Mail" label EV 352377144US was submitted on October 15, 2004 at a Portland, Oregon USPS office.

Accordingly, the requirements under 37 CFR 1.10(c) have been satisfied.

### **CONCLUSION**


The date of receipt of the above application is 15 October 2004. Accordingly, this is the date that all of the requirements under 35 U.S.C. 371 have been satisfied.

The Notification of Acceptance (Form PCT/DO/EO/903) mailed on 28 April 2004 is **VACATED** with the mailing of this decision.

### **CONCLUSION**

For reasons above, the petition under 37 CFR 1.10(c) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371 including the preparation and mailing of a Notification of Acceptance (Form PCT/DO/EO/903) and filing receipt. The 35 USC 371(c)(1), (c)(2), and (c)(4) date of this application is **15 October 2004**.

  
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